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November 13, 2002

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TO: SUPERVISOR ZEV YAROSLAVSKY, Chairman  
SUPERVISOR GLORIA MOLINA  
SUPERVISOR YVONNE BRATHWAITE BURKE  
SUPERVISOR DON KNABE  
SUPERVISOR MICHAEL D. ANTONOVICH

FROM: LLOYD W. PELLMAN  
County Counsel

RE: **Office of Independent Review - Annual Report and Attorney Costs**

When your Board approved the hiring process and operational plan for the Office of Independent Review (OIR) on September 19, 2000, this office was instructed to report back on attorney costs within six months after the start of the program and also to provide a report after one year on how the program is functioning and if goals are being achieved.

As noted in our July 8, 2002 memorandum reporting the six-month attorney costs, the OIR became fully staffed and operational in October of 2001. The services of the Chief Attorney and other five attorneys comprising the OIR are provided on a full-time basis with commensurate annual compensation ranging from \$150,000 to \$200,000 paid in 12 monthly installments under their respective contracts. There currently are no part-time attorney services being provided to the OIR.

Based upon information provided by the Chief Administrative Office, compensation paid to OIR attorneys from the start of the fully staffed program in October 2001 through October 31, 2002 totaled \$1,083,333. Reimbursable expenses totaling \$11,842.96 were also paid during this period. In addition, use of office space, related equipment and staff support are provided to the OIR attorneys at Sheriff's Department facilities.

With regard to its functioning and achievement of goals, the OIR prepared and submitted a one-year report on its activities and accomplishments in October 2002. A copy of that report is enclosed for your reference and review.

At pages 55 and 56, the report notes concerns regarding constraints on OIR access to documents contained in civil litigation files. As your Board is aware, we sought expert legal advice from Professor Gregory C. Keating of the University of Southern California School of Law on the serious ethical and legal issues presented by OIR's requests for access to these files. In his report, which notes input received from OIR and which we provided to your Board on October 16, 2002, Professor Keating concludes that while the OIR may be granted access to litigation files in closed cases where only the County is named as a defendant, the County Counsel cannot provide access to such files in cases where individual Sheriff's deputies are named as defendants without first obtaining the consent of the individual deputies.

As I indicated in my memorandum of October 16 conveying Professor Keating's report, we are actively reviewing the issues to determine what alternatives may be available to facilitate OIR access to information derived from the civil litigation process without violating the ethical duties and restrictions placed on County Counsel by the laws governing an attorney's duties of confidentiality and loyalty to the attorney's clients and former clients. We will continue to work with the Sheriff and the Office of Independent Review in attempting to find the most reasonable resolution possible consistent with these ethical and legal constraints and the best interests of the County.

LWP:DMM:mr

Enclosure

c: David E. Janssen  
Chief Administrative Officer

Violet Varona-Lukens, Executive Officer  
Board of Supervisors

Michael J. Gennaco, Chief Attorney  
Office of Independent Review

# Office of Independent Review First Report



OCTOBER 2002

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# Foreword

**by Michael J. Gennaco**

Chief Attorney, Office of Independent Review

The controversial arrest of Donovan Jackson in Inglewood on July 6, 2002, captured on videotape and publicized around the country, brought issues of excessive force and officer misconduct back to the forefront of public consciousness. The primary focus has been on the Inglewood police officers, two of whom have been indicted for their actions on that day. However, two of the involved officers were LASD patrol deputies who initially detained the teenaged Jackson and his father. This meant it was both necessary and appropriate for the Los Angeles Sheriff's Department to open its own investigation into the incident, which in turn meant that there was a role for the new Office of Independent Review.

OIR is a one-year-old oversight body designed to ensure the integrity of LASD's internal misconduct investigations. As Chief Attorney of OIR, I have monitored the ensuing events very closely. I have also had a unique vantage point for assessing the revived public debate about the ability of police agencies to police themselves and the value of independent police oversight.

LASD's internal investigation of the Inglewood incident began within minutes of its occurrence. Supervisors responded to the scene and interviewed witnesses and the detainees themselves before the videotape had received its first airing on the local news. On the morning of July 8, when LASD executives first met to assess the existing evidence and receive a briefing from criminal and internal affairs investigators, two OIR attorneys actively participated in the proceedings and conveyed investigative recommendations. In doing so, they brought an independent perspective to the table and helped to focus the goals of LASD's investigation. OIR's presence and its involvement helped ensure that LASD's priorities were not damage control or cover-up, but rather a comprehensive determination of the facts, an objective assessment of the deputies' conduct, and a review of any policy and training issues that might be implicated.

records and personnel, the full support of LASD management, and the independence to represent the interests of the people of Los Angeles County without bias or inhibition.

At its onset, OIR recognized the potential pitfalls of voicing opinions about LASD without the support of a strong foundation based on knowledge of how LASD functions. Accordingly, OIR spent many hours listening to executives, rank-and-file employees, specialized units, and employee organizations to acquire a working knowledge of the organization and how it approaches the work it is entrusted to perform. This approach of “listening and learning first” has continued to dictate how OIR operates once a case-specific or systemic issue is identified—ask questions, think through and develop recommendations, and return to the original sources to devise implementation strategies. OIR has found that a commitment to “getting it right” is essential to establishing credibility when it seeks to affect specific cases and pursue broader changes.

Having spent a year learning how LASD works, evaluating its practices, and reviewing its misconduct investigations, my colleagues and I have obviously developed a number of initial impressions. Our hope is that the entirety of this report reflects and substantiates those impressions, but a few central questions seem worth addressing at the outset.

With regard to the treatment of employee misconduct, does LASD hit the mark every time? Of course not. With 8,000 sworn peace officers and a total of 16,000 employees, it is a daunting task to properly address, investigate, and resolve allegations of wrongdoing. It is also true that a possibility of bias, conscious or unconscious, may color the decisions of law enforcement officials who are evaluating the actions of their colleagues in a dangerous profession. LASD, however, has recognized the existence of that potential conflict and enlisted the assistance of independent reviewers who are not influenced by relationships or assumptions when evaluating facts.

The insularity commonly associated with law enforcement does not permeate LASD—on the contrary, and as best exemplified by its chief executive, it takes the initiative to reach outward in seeking to make itself better. To this day, heads of other law enforcement agencies often bristle at “outsiders” looking over their shoulder. LASD, however, has challenged independent eyes to do so—not to prove that all is perfect, but rather to garner assistance in making LASD better.

In order to enhance public confidence in the handling of allegations of misconduct and to provide an accounting for the resources expended in furtherance of this effort, we felt it important to report to the public our initial assessment of the way in which internal investigations are being conducted, and how OIR has begun to have an impact on such investigations. Accordingly, what follows is OIR's first public report to the Board of Supervisors and the people of Los Angeles County. The report describes OIR's unique model and how it works. More importantly, it reveals what that model has yielded in its first year of operation. We are encouraged by the impact OIR has made thus far, and we are eager to continue to build on that foundation.

OIR extends its thanks to the countless persons who have assisted us in our first year of operation both within and outside LASD. From its origin, OIR has recognized the need to reach out to civil rights leaders and the community at large and listen to those voices speak to the issues they have confronted. Public defenders, defense attorneys, prosecutors, and judges have also raised valid concerns with us. To all who have provided their time and expertise, we are deeply appreciative—the initial successes of OIR would not have been achieved without your assistance.

On behalf of the attorneys of OIR, I welcome you to review this report and to share your feedback with us. We also intend to provide periodic updates, reports and information via our web-site at [www.laoir.com](http://www.laoir.com). In the meantime, we will continue our efforts, and we expect that our next public communications will bring word of further positive developments for OIR, LASD, and the County as this police oversight model continues to move forward.

# The OIR Model

**T**HE FORMATION of the Office of Independent Review began with an idea from Sheriff Lee Baca. He recognized civilian oversight as a means to help improve both the quality and objectivity of LASD's internal investigations of officer misconduct and the public's understanding of that quality and objectivity. OIR was created with the support of the Board of Supervisors and input from Special Counsel Merrick Bobb (a nationally recognized expert in civilian oversight and longtime advisor to the Board regarding LASD issues) and organizations including the Asian Pacific American Legal Center, the NAACP, the American Civil Liberties Union, and the Mexican American Legal Defense and Education Fund.

Those contributing to OIR's model were determined to provide OIR with every opportunity to succeed. In his fourteenth semi-annual report, Special Counsel Merrick Bobb referred to OIR as having the potential to become "the gold standard" of civilian oversight, "a national model, incorporating all the strengths of civilian review and civilian participation without the weaknesses." OIR's initial accomplishments and its solid foundation for the future are attributable to several distinctive factors.

The first is the commitment of significant resources by the Board of Supervisors. OIR has six full-time attorneys with extensive backgrounds in civil rights and criminal law issues. In addition, OIR has the support staff and other resources necessary to fulfill its function professionally. In contrast to other models that rely on part-time or volunteer overseers, the full-time status of OIR attorneys ensures complete dedication to the tasks of oversight, without conflicting demands. OIR attorneys are committed to developing a deeper familiarity with LASD, a more complete knowledge of police policies and practices, and a greater expertise regarding best practices for addressing officer misconduct. This greater knowledge means that OIR's ultimate recommendations are well-grounded and



A feature that facilitates OIR's access and the overall efficiency of its operations is the fourth major asset to the model: our physical proximity to the LASD units whose responsibilities most directly relate to our mission. Though OIR's offices are self-contained and on a separate floor, they are located in the same building as the investigators who conduct criminal investigations of LASD employees and the investigators who conduct administrative investigations of LASD employees. Also nearby is the Homicide Bureau, which investigates officer-involved shootings, the Civil Litigation Unit, which investigates allegations of civil liability, and the Advocacy Unit, which defends LASD administrative determinations in subsequent hearings. Thus, the documents and people with the critical core of information necessary for OIR to perform our analysis and review function are immediately available. This proximity has paid dividends not only in terms of practicality, but also as a way of readily establishing OIR as a recognized part of the review process when officer misconduct is at issue.

Another critically important feature is the support of the Board of Supervisors. The Board has traditionally played an active role in questioning LASD's policies and procedures and in managing civil litigation that arises from allegations of misconduct. Because of the attorney-client relationship between OIR and the County, OIR is able to share sensitive information with the Board on a confidential basis. Moreover, LASD is well aware of this relationship and recognizes the duty and responsibility of OIR to regularly report to the Board. Accordingly, the dynamic the Board has created and the Sheriff has acknowledged allows OIR's voice to resonate loudly and effectively.

OIR RECOGNIZED immediately that its own effectiveness—and its credibility—as a monitor of LASD required a foundation of basic knowledge of and familiarity with LASD's workings. OIR accordingly familiarized itself with LASD's patrol and custody functions through visits to each of the patrol and custody facilities, ride alongs with deputies on patrol, and meetings with command staff. OIR met with many of LASD's special teams to gain a better understanding of their functions and the resources they provide to LASD, including the Mental Evaluation Team, Special Enforcement Bureau, Crime Lab, Employee Support Services, LASD Ombudsperson, and the tactical training team at Laser Village. OIR also attended various types of LASD meetings, including the Executive Planning Council, to familiarize itself with the business of LASD.

OIR learned about the computer databases and other resources that can assist in identifying potential areas of concern and investigating allegations of misconduct. OIR additionally sought information on innovative projects undertaken within LASD that relate to areas of OIR interest. As a result OIR has been briefed on LASD's bias based policing studies, and projects to streamline citizen complaint review, and OIR has monitored a pilot program for a Regional Force Review Committee.

Finally, OIR continues to seek information about practices at other law enforcement agencies and oversight entities through organizations such as the National Association for Civilian Oversight of Law Enforcement, Police Assessment Resource Center, and Americans for Effective Law Enforcement.

# Impact on *Investigations*

## Case One

*Late one Friday afternoon in the summer of 2002, Sheriff Baca contacted an OIR attorney to share a concern and make a request. The concern stemmed from the possibility that one of his deputies had used force inappropriately the night before, during a traffic stop. The request was for OIR to play an active role in the earliest stages of the investigation, when LASD officials would begin to define LASD's response to this potentially serious matter.*

*By Sunday morning, the OIR attorney had taken a number of steps to review the incident, to discuss his perspective and his recommendations with investigators and LASD officials, and to ensure that the possible misconduct would receive thorough, fair, and effective scrutiny. These steps included traveling with criminal and internal affairs investigators to a Sheriff's station on Sunday morning to view a videotape of the incident that a bystander had provided. The video showed the deputy pushing or slapping the face of a detainee, a possibly unnecessary use of force. The tape raised issues of possible criminality as well as violations of policy, and both needed to be promptly addressed.*

*After consulting with both criminal and internal affairs investigators, OIR obtained a commitment from the criminal investigator that he would present the tape to the District Attorney's Office first thing Monday morning for a prompt assessment of prosecutorial merit. Before leaving the Sheriff's facility, the OIR attorney discussed the matter with the facility Captain, who concurred with the proposed course of conduct.*

*When this had been accomplished, and the District Attorney had determined that the evidence did not appear to warrant criminal prosecution, the focus turned to the administrative*

*affairs the relative importance of the witness to the investigation. The witness was the only civilian who allegedly witnessed the deputy's threat. Due to the witness's importance, OIR persuaded internal affairs to conduct the interview.*

*The witness proved difficult to locate. The investigator did not know the witness's true name because the witness had given a false name and date of birth when he testified. Over a number of months, OIR continually monitored internal affairs' efforts to find the witness. The investigator, through diligent and resourceful detective work, was able to cross-reference his aliases and determine the true name of the witness. Using this true name to search a computer database, the investigator found that the witness was temporarily in custody in a remote county jail facility. There was a time constraint. The interview had to be conducted quickly because within a matter of days the witness was due to be sent to a distant state prison. On a moment's notice, the investigator accompanied by an OIR attorney drove to the county jail facility. The witness voluntarily consented to the interview, which continued for several hours late into the night.*

*The investigator and the OIR attorney questioned the witness about the allegations and probed potential issues of bias. The interview uncovered key evidence. This evidence allowed the fact-finder to weigh the credibility of the witness and to better assess the case as a whole.*

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These scenarios demonstrate how OIR inserts itself into LASD's review and decision-making mechanisms to offer its recommendations and promote fair and effective results. During this first year, OIR created the day-to-day procedures that ensure OIR receives notice of important incidents and has an opportunity in the review process to voice its recommendations.

In addition to the direct examples in this section, OIR's presence as an added layer of scrutiny has an intrinsic influence on the investigative process. The prospect of effective monitoring alone helps to make investigators and decision-makers more conscious of the need for thoroughness and careful analysis, and thereby enhances the quality of the results.

# Attorney Liaison Assignments

## FIELD OPERATIONS

| F.O.R. I             | Attorney         |
|----------------------|------------------|
| Altadena             | Ray Jurado       |
| Crescenta Valley     | Ilana Rosenzweig |
| East L.A.            | Ray Jurado       |
| Lancaster            | Rob Miller       |
| Malibu/Lost Hills    | Ben Jones        |
| Palmdale             | Rob Miller       |
| Santa Clarita Valley | Stephen Connolly |
| Temple               | Rob Miller       |

| F.O.R. II         | Attorney         |
|-------------------|------------------|
| Carson            | Stephen Connolly |
| Compton           | Stephen Connolly |
| Century           | Rob Miller       |
| Lennox            | Ilana Rosenzweig |
| Lomita            | Ben Jones        |
| Marina del Rey    | Ben Jones        |
| West Hollywood    | Ilana Rosenzweig |
| Community College | Ilana Rosenzweig |
| Metrolink         | Ben Jones        |
| Transit Services  | Rob Miller       |

| F.O.R. III         | Attorney         |
|--------------------|------------------|
| Avalon             | Ben Jones        |
| Cerritos           | Ilana Rosenzweig |
| Industry           | Ray Jurado       |
| Lakewood           | Stephen Connolly |
| Norwalk            | Ray Jurado       |
| Pico Rivera        | Rob Miller       |
| San Dimas          | Ben Jones        |
| Walnut/Diamond Bar | Ben Jones        |

## ADMINISTRATIVE SERVICES DIVISION

| Bureau    | Attorney  |
|-----------|-----------|
| Personnel | Ben Jones |

## CUSTODY DIVISIONS

| Facility                           | Attorney         |
|------------------------------------|------------------|
| North County Correctional Facility | Stephen Connolly |
| Medical Services                   | Ben Jones        |
| Men's Central Jail                 | Rob Miller       |
| PDC North/South/East               | Stephen Connolly |
| Mira Loma Detention Center         | Ilana Rosenzweig |
| Twin Towers Correctional Facility  | Ray Jurado       |
| Inmate Reception Center            | Ray Jurado       |

## DETECTIVE DIVISION

| Bureau            | Attorney         |
|-------------------|------------------|
| Commercial Crimes | Ilana Rosenzweig |
| Family Services   | Ilana Rosenzweig |
| Narcotics         | Ray Jurado       |

## SPECIAL OPERATIONS DIVISION

| Bureau              | Attorney         |
|---------------------|------------------|
| Reserve Forces      | Stephen Connolly |
| Safe Streets        | Stephen Connolly |
| Special Enforcement | Stephen Connolly |

## TECHNICAL SERVICES DIVISION

| Bureau                            | Attorney   |
|-----------------------------------|------------|
| Communications & Fleet Management | Rob Miller |

“Consensus” does not mean compromise. A constructive tension between OIR and LASD is as healthy as it is inevitable, and occasional disagreements are a byproduct to be expected. Views can and do diverge regarding the necessity or adequacy of a given investigation, the outcome as dictated by the evidence, and the appropriate discipline for a particular violation. OIR is committed to resolving those disagreements by sharing its perspective at each level of LASD’s hierarchy and with the Board of Supervisors.

To date, the consensus model has been a productive one. The decisions that have emerged from each individual case have been consistently principled and supported by the totality of relevant information.

### **III. Internal Review**

LASD’s internal review procedures provide OIR with valuable information about incidents requiring OIR attention. OIR therefore established procedures to ensure its prompt and reliable access to that information. For instance, both internal affairs and criminal investigators notify OIR whenever an investigation of employee misconduct is opened. In addition, taking advantage of LASD’s existing force notification policies, OIR is notified of officer-involved shootings and other significant uses of force. These force notifications often require immediate response and, because LASD operates around the clock, can come at any time. At least one OIR attorney is available at all times. That “duty” attorney is routinely contacted by LASD to respond to officer-involved shooting scenes or other significant events. To date, OIR has received prompt notice of new investigations and OIR attorneys have “rolled out” to the scene of more than 37 different force incidents.

OIR responds to the information it receives from each of the distinct internal review mechanisms in a different manner; however, the common goal in each situation is ensuring an appropriate level of inquiry and a thorough review of all potential issues.

#### ***A. Officer-Involved Shooting Review***

Because of the heightened importance to the public, and OIR, when an officer uses deadly force, OIR’s active involvement in LASD’s review of officer-involved shootings begins within minutes of any shooting. The duty attorney is notified after a shooting and immediately responds to the location. This attorney personally inspects the physical location, with similar lighting and environmental conditions

*A deputy fatally shot an individual who was behaving erratically in public and brandishing a knife. Per OIR procedures, an OIR attorney rolled out to the scene immediately after the shooting to assess the situation. After the District Attorney determined the shooting was legally justified, OIR reviewed the investigation for potential policy and training issues. At LASD's review of the shooting, OIR identified several questions about both the shooting and LASD's handling of its aftermath that the investigation left unanswered. These questions included whether less lethal alternatives might have been available, such as requesting the Mental Evaluation Team, or whether there was sufficient communication between the responding deputies. The LASD panel of executives agreed to order further inquiry into the matters raised by OIR.*

Some examples are more subtle. Commanders have begun to initiate general discussions about issues OIR has previously raised with them. Additionally, investigators have begun to discuss cases with OIR before the Committee's meeting to assess whether any additional investigation is needed.

#### *B. Force Investigations*

As with officer-involved shootings, OIR's duty attorney receives immediate notification after non-shooting force incidents that involve significant injury to the suspect, or otherwise suggest particular cause for concern. The attorney can then respond to the scene of the incident and begin monitoring the investigation from its outset. As with an officer-involved shooting, this allows the attorney to observe the physical location and develop preliminary impressions. Importantly, early notification allows OIR to make early recommendations regarding the course of the investigation.

*Early one weekend morning, the duty OIR attorney was informed that internal affairs was investigating a use of force that had just occurred and had been videotaped. Because of the early notification, the OIR attorney was able to express concerns about obtaining witness interviews before their statements could be tainted by any broadcast of the videotape and request that all witnesses be interviewed as promptly as possible. Internal affairs responded by assigning additional investigators to the investigation and completed its canvass of witnesses within the first 24 hours.*

Once internal affairs completes its investigation of these significant uses of force, OIR reviews the investigation, raises any legal or evidentiary issues, and when appropriate requests further investigation. When the investigation is complete, the force is reviewed by the same Force Review Committee that scrutinizes shootings, for the same purpose. And just as with shootings, OIR plays an active role.

*At a force review, the investigator presented this summary of events from the deputies' perspective: While on patrol late one night, deputies observed a man look towards them and then make furtive motions with his hands in his waistband. The deputies stopped him, and patted him down for weapons. During that pat down, one of the deputies discovered a baggie of what looked like rock cocaine. The deputy set the baggie aside. When the deputy was momentarily distracted the man grabbed the baggie, swallowed it, and tried to run away. The deputies grabbed the man and he became very combative. A struggle on the ground ensued, eventually resulting in the man being subdued by several deputies through the use of flashlight blows, pepper spray, and a hobble restraint.*

*Based on those facts, the Force Review Committee initially concluded that the level of force used was reasonable given the arrestee's assaultive behavior. No questions were raised about the credibility of the deputies' version of events. OIR observed, however, that the medical treatment requested by the deputies for the arrestee was not consistent with the deputies' purported observation that the arrestee had eaten a baggie of suspected rock cocaine. OIR recommended further investigation on the medical treatment issue so that the case could then be reevaluated to determine whether the deputies' lack of medical concern impacted on the deputies' credibility. After discussion, an investigation was ordered, focusing beyond the conventional use of force issues to the questions of credibility. As a result of this, the deputies were referred for a formal disciplinary investigation for failure to meet LASD standards for medical referral and booking.*

## *D. Internal Affairs Administrative Investigations*

OIR's role in administrative investigations, like its role in the other internal review mechanisms, begins with early notification of the allegations, and proceeds through decisions regarding the conclusion of the investigation. There are many junctures in internal affairs investigations that can affect their quality and outcome. The goal of OIR's protocol is to provide effective input at each such juncture without impeding the pace of the investigation and ultimate resolution. This includes providing input as the involved parties in the chain of command are formulating positions on a case. As of the beginning of September 2002, OIR had commenced this oversight of 144 investigations.

### **1. Initiation of Investigation**

OIR is notified when internal affairs receives a request for an investigation. At times, OIR is aware of these requests for investigation before they are formally made because OIR participated in the shooting review, force review or criminal investigation that precipitated the request. In other instances, OIR is aware of the request for an investigation because OIR has actually caused LASD to initiate the investigation based on information it has received through civil claims and lawsuits, or public and private attorneys. At the outset of an investigation, the OIR attorney may confer with the investigator to learn the known circumstances of the case and to discuss investigative strategy and the most urgent sources of evidence.

*Allegations were made that a volunteer in an LASD youth program had used force on a minor. Upon learning of the allegation, and to determine whether it was an isolated incident, LASD promptly conducted interviews of as many participants in the program as it could over a weekend. After the interviews were completed, OIR reviewed them. Due to time constraints, the interviews were short. In some cases, participants referenced potentially important incidents, but because the investigators had so many people to interview, they did not ask follow-up questions. OIR discussed with LASD how to best address those incidents. OIR recommended, and LASD agreed, that the interviews that raised potentially important incidents would be forwarded to the involved patrol station to conduct a further inquiry, including a more in-depth interview of those participants who mentioned possibly troubling incidents.*



#### 4. Findings and Discipline

Once the charges have been finalized, the OIR attorney meets with the first-level decision maker, usually the unit Captain, to present OIR's opinion as to whether the charges against the LASD personnel should be Founded, Unfounded, Unresolved, or Exonerated. For investigations where the OIR attorney believes at least some of the charges should be founded, the OIR attorney also formulates a recommended discipline, or discipline range.

*OIR reviewed an investigation of false statements made by a deputy in an arrest report. The District Attorney had declined to file criminal charges for the false statements. OIR persuaded LASD that even though the District Attorney had concluded that the deputy's conduct did not violate the criminal statute, it could nonetheless violate LASD policies, which are broader than the statute. LASD therefore charged the deputy with violating the relevant LASD policy regarding false statements, and determined that the charge was founded.*

OIR relies on a frank discussion with the first-level decision maker to produce an appropriate resolution of the investigation. OIR has found that this in-depth consultative approach has, to date, produced a consensus in virtually every case. If, however, OIR and the first line decision-maker cannot reach an agreement as to the ultimate conclusion on a case, OIR has the option to press its position with the Division Chief, who must approve the conclusion, or with the Undersheriff, or ultimately with the Sheriff.<sup>1</sup>

*In internal affairs interviews one deputy offered a blanket denial, while the other admitted his responsibility for certain conduct. In order to reward and encourage the deputy who was more honest, OIR recommended that the discipline for the more forthcoming deputy be less severe relative to his colleague. LASD decision makers agreed that this would be appropriate and the discipline reflected this recommendation.*

<sup>1</sup> Even if the OIR attorney and unit captain do reach consensus, OIR continues to monitor the investigation as that initial decision is reviewed by successive levels of executives to ensure that changes are not made without opportunity for OIR's input.

## Oversight of Administrative Discipline Cases *May-July 2002*

| <b>Allegations</b>  | <b>OIR Recommendation</b>  | <b>Result</b> | <b>Discipline</b>  |
|---|--|---------------|--------------------|
| Deputy misused access to law enforcement data. Also alleged that Deputy brandished a firearm in an off-duty contact, stole firearms from detained suspects and assaulted detainees. | <i>Investigation:</i> Adequate. OIR had concerns about a few potential "loose ends" that were not pursued, but is satisfied that they would not ultimately affect the outcome in either direction.<br><i>Charges:</i> Appropriate<br><i>Findings:</i> LASD concurrence<br><i>Discipline:</i> N/A. LASD agreed that informal counseling was appropriate in light of potentially dysfunctional personal circumstances implicated by the investigation. | Unresolved    | None               |
| Deputy, who claimed self-defense, punched spouse's step-father at chance encounter  | <i>Investigation:</i> Thorough<br><i>Charges:</i> Appropriate<br><i>Findings:</i> Not Accepted. OIR recommended unresolved due to self-defense issue.<br><i>Discipline:</i> N/A  | Founded       | 1 Day suspension   |
| Off-duty Deputy intoxicated at party argued with spouse and then threatened victims of auto accident caused by spouse.  | <i>Investigation:</i> Thorough<br><i>Charges:</i> Appropriate<br><i>Findings:</i> LASD concurrence<br><i>Discipline:</i> Not accepted by LASD. OIR recommended 30-days suspension. LASD decided on 20-days suspension.   | Founded       | 20 Days suspension |
| Sergeant detained suspects, but told Deputy to omit Sergeant's role from report Deputy wrote.   | <i>Investigation:</i> Thorough<br><i>Charges:</i> At OIR request, charge added.<br><i>Findings:</i> LASD concurrence<br><i>Discipline:</i> LASD concurrence  | Founded       | 15 Days suspension |
| Deputy wrote false report omitting Sergeant's participation in arrest.  | <i>Investigation:</i> Thorough<br><i>Charges:</i> At OIR request, charge added.<br><i>Findings:</i> LASD concurrence<br><i>Discipline:</i> LASD concurrence  | Founded       | 10 Days            |
| Lieutenant inadequately supervised large scale search warrant, leading to improper search of a residence.   | <i>Investigation:</i> Thorough<br><i>Charges:</i> Appropriate<br><i>Findings:</i> LASD concurrence<br><i>Discipline:</i> Within range recommended by OIR.  | Founded       | Written reprimand  |

| <b>Allegations</b>  | <b>OIR Recommendation</b>   | <b>Result</b> | <b>Discipline</b>  |
|---|---|---------------|--------------------|
| Deputy allowed injured recruit to box.  | <i>Investigation:</i> Thorough<br><i>Charges:</i> Appropriate for allegations, but probably insufficient evidentiary basis to name this subject.<br><i>Findings:</i> LASD concurrence<br><i>Discipline:</i> N/A   | Unfounded     | None               |
| Deputy's random urine sample tested positive for marijuana.   | <i>Investigation:</i> Thorough<br><i>Charges:</i> Appropriate<br><i>Findings:</i> LASD concurrence<br><i>Discipline:</i> LASD concurrence   | Founded       | Discharge          |
| Deputy used patrol car to bump fleeing suspect and make arrest.   | <i>Investigation:</i> Thorough, including review of training materials recommended by OIR.<br><i>Charges:</i> Appropriate<br><i>Findings:</i> LASD concurrence<br><i>Discipline:</i> OIR concurrence <sup>1</sup> | Founded       | 15 Days suspension |
| Civilian process server repeatedly altered time logs; lied to investigators.  | <i>Investigation:</i> Thorough<br><i>Charges:</i> Appropriate<br><i>Findings:</i> LASD concurrence<br><i>Discipline:</i> LASD concurrence   | Founded       | Discharge          |
| Civilian process server altered time logs.  | <i>Investigation:</i> Thorough<br><i>Charges:</i> Appropriate<br><i>Findings:</i> LASD concurrence<br><i>Discipline:</i> LASD concurrence   | Founded       | 5 Days suspension  |
| Deputy off-duty battery.  | <i>Investigation:</i> Thorough<br><i>Charges:</i> Appropriate<br><i>Findings:</i> OIR concurrence<br><i>Discipline:</i> N/A   | Unfounded     | None               |
| Custody assistant lied on application about past child abuse arrest.  | <i>Investigation:</i> Thorough<br><i>Charges:</i> Appropriate<br><i>Findings:</i> LASD concurrence<br><i>Discipline:</i> LASD concurrence <sup>2</sup>  | Founded       | Discharge          |
| Deputy falsified information on police report regarding basis for arrest and who had made arrest. (Deputy prosecuted, pleaded nolo contendere.) | <i>Investigation:</i> Thorough<br><i>Charges:</i> Appropriate<br><i>Findings:</i> LASD concurrence<br><i>Discipline:</i> LASD concurrence   | Founded       | Discharge          |

1 OIR also recognized need for LASD to clarify training in use of vehicle to effect arrests. Due to a number of similar incidents (most not disciplinary matters). OIR is overseeing development of new training materials. During this case review, OIR identified a potentially misleading training video.

2 Subject recently found guilty of crime of oral copulation with inmate and is pending trial in separate case for credit card fraud.

| <b>Allegations</b>   | <b>OIR Recommendation</b>   | <b>Result</b>             | <b>Discipline</b>                       |
|--|---|---------------------------|---|
| Off-duty Deputy intoxicated at restaurant struck spouse.   | <i>Investigation:</i> Thorough as to incident, but Deputy's prior record not adequately researched.<br><i>Charges:</i> Appropriate<br><i>Findings:</i> LASD concurrence<br><i>Discipline:</i> LASD concurrence after OIR research and presentation of prior record.   | Founded                   | Pending legal review                    |
| Sergeant joined pursuit by other police agency though ordered to stay out; violated Code 3 policy; failed to order Deputies to desist. | <i>Investigation:</i> At OIR request, additional witnesses interviewed.<br><i>Charges:</i> At OIR request, charges added.<br><i>Findings:</i> LASD concurrence.<br><i>Discipline:</i> LASD concurrence  | Founded                   | Demotion<br>[Sergeant retired]          |
| Two Deputies joined above pursuit; failed to report immediately a collision with each other.   | <i>Investigation:</i> At OIR request, additional witnesses interviewed.<br><i>Charges:</i> Appropriate<br><i>Findings:</i> LASD concurrence<br><i>Discipline:</i> OIR concurrence   | Founded,<br>both Deputies | 20 Days suspension, each.               |
| Three Deputies used excessive force and profanities during an arrest.  | <i>Investigation:</i> Thorough<br><i>Charges:</i> Appropriate<br><i>Findings:</i> LASD concurrence<br><i>Discipline:</i> N/A  | Unfounded,<br>all three   | None                                    |
| Fourth Deputy involved subsequent to arrest was discourteous.  | <i>Investigation:</i> Thorough<br><i>Charges:</i> Appropriate<br><i>Findings:</i> LASD concurrence<br><i>Discipline:</i> OIR concurrence  | Founded                   | None. Service comment report on record. |
| Deputy shot at oncoming and then retreating suspect's automobile.  | <i>Investigation:</i> Thorough<br><i>Charges:</i> Appropriate<br><i>Findings:</i> OIR concurrence (as to unfounded v. unresolved)<br><i>Discipline:</i> N/A   | Unfounded                 | None                                    |
| Deputy had improper association with prostitute, lied to another police agency, and harassed prostitute.                               | <i>Investigation:</i> Thorough; however, OIR questioned some investigative tactics which could potentially create liability; OIR has recommended a change in investigation guidelines, which has been accepted and promulgated by LASD.<br><i>Charges:</i> Appropriate<br><i>Findings:</i> LASD concurrence<br><i>Discipline:</i> Accepted by LASD <sup>3</sup> | Founded                   | 30 Days suspension                      |

3 Deputy will be transferred; however, OIR's recommendation that Deputy be restricted to supervision of male inmates that was accepted in principle by Legal Advocacy was not sustained throughout settlement negotiations as a result of miscommunication with County Counsel.

*An officer had demonstrated, in a number of off-duty incidents, a problem with controlling his anger. OIR gathered facts regarding the officer's misconduct and researched available psychological counseling programs. OIR was able to identify a program tailored for law enforcement personnel. Because the misconduct did not rise to the level of a dischargeable offense, OIR formulated a remedial plan specifically addressing the behavioral issues that led to the misconduct. LASD concurred. The officer agreed to attend the psychological counseling and serve a short suspension, and accepted that if he did not complete the counseling program, he would serve additional days of suspension.*

#### **IV. Outside Sources of Information**

Occasionally, outside sources of information, such as civil litigation or the Board of Supervisors, may be the first indication to OIR of an issue requiring LASD investigation. As with internal mechanisms, OIR has established procedures where possible in order to ensure its awareness of such issues. If the allegation has never been identified or considered for formal review within LASD, OIR's first task is to make sure that the appropriate entities within LASD know of the incident and, when appropriate, initiate an investigation. If the allegation has already been subject to internal scrutiny, OIR reviews that inquiry to ensure it fully addressed all information currently available and requests additional internal review when it has not.

##### **A. Civil Litigation/Claims**

The civil litigation process offers crucial information about allegations of officer misconduct. Unfortunately, in the past LASD has largely viewed civil litigation as a realm exclusively for its defense lawyers and has not thoroughly exploited this valuable information source. OIR has therefore focused on finding a better way for LASD to take advantage of the information regarding alleged misconduct found in civil claims and complaints, so that those allegations of misconduct are subjected to fair, thorough, and effective internal review.

OIR has focused attention on the civil claims filed with the Board of Supervisors prior to most civil litigation. OIR receives a monthly update of the new claims filed relating to LASD conduct. Upon the recommendation of OIR, LASD has

cant liability for the County. For instance, the Board recently requested that OIR review the LASD inquiry into the videotaped July 6, 2002 encounter among Donovan Jackson, Inglewood Police Officers, and Sheriff's Deputies. OIR has been monitoring LASD's investigation as it proceeds to ensure it is fair, thorough, and effective. It has also kept the Board apprised of the investigation as it progresses. OIR will continue to inform the Board of its participation in the development of that investigation and ultimately, any administrative, policy, and/or training recommendations made by OIR.

Similarly, as discussed for all litigation generally, when the Board refers to OIR civil litigation that resulted in a significant liability for the County, OIR focuses on the quality of any LASD internal review of the conduct and any policy, practice, or training issues that resulted in civil liability. OIR reviews for thoroughness any administrative inquiry into the allegations and recommends, when appropriate, the commencement or expansion of an internal affairs investigation. OIR also can and does suggest changes to existing policy, practice, and training in order to reduce the likelihood of future civil rights violations and to avoid future civil liability.

### *C. Participants in the Criminal Justice System*

In this first year OIR has also reached out to key entities and individuals in the criminal justice system, including the Presiding Judge of the Los Angeles Superior Court and his successor, the Head Deputy District Attorney of the Justice System Integrity Division and members of his staff, the Public Defender and his executive staff, and the Alternate Public Defender and her executive staff. OIR recognizes that each of these participants in the system may, at some point, learn of an allegation of misconduct against an officer. At each meeting, OIR offered itself as a resource to ensure such allegations receive appropriate LASD review and to inquire into identified systemic concerns.

*The Public Defender's Office sought OIR's assistance because it felt that LASD was not responding to its allegation that a deputy had stolen property from a defendant. OIR's inquiry into the investigation revealed that while LASD was appropriately investigating whether the deputy had violated policy by either stealing the property or failing to safeguard it, LASD was not investigating whether the deputy had made false statements regarding his recollection of the property. OIR took steps to ensure that a thorough disciplinary inquiry into this issue would occur.*

# PART THREE Impact on Policies and Practices

## Case One

*At the end of a brief car chase, the suspect stopped his car, jumped out and began fleeing on foot. The Deputy continued to pursue in a radio car and caught up to the suspect quickly. The Deputy then decided to bump the suspect with the radio car rather than get out and run after him, saying that the suspect was holding his pants up and might be reaching for a weapon. The suspect fell down when hit by the car and was quickly handcuffed and arrested. He sustained no serious injuries.*

*This incident was brought before the LASD's Executive Force Review Committee to decide whether the intentional use of force by the Deputy merited a full internal affairs investigation. OIR reviewed the background materials and attended the Committee meeting. At the meeting OIR pointed out that the LASD had recently produced a training video on another tactical topic (shooting through windshields) that included images of the use of a police car to stop a suspect on foot. OIR suggested that this might send a conflicting message or provide an excuse for the inappropriate use of force. OIR suggested that an IAB investigation was needed to determine whether this video indeed created a problem or had any effect on the case at hand. The Committee ordered a full internal affairs investigation. Based on the results of the investigation, the Committee decided that the use of the car to make the arrest was an improper use of force and the Deputy should be disciplined. OIR concurred with this decision, but also requested that the Committee cause the LASD to address the general policy issue of if and when the use of a car to effect an arrest is justifiable. The Committee consequently turned this issue over to the LASD Training Bureau and tasked it to clarify all policy language in existing training materials so that the Department's message about the use of cars to effect an arrest is explicit: they may only*

## **I. Systemic Changes to LASD Responses to MDT Subpoenas**

In August 2001, after the Board of Supervisors agreed to settle a civil rights lawsuit, the Board asked OIR to investigate the plaintiff's allegations, oversee the administrative investigation into the conduct of the deputies involved and take measures to help prevent similar allegations from occurring in the future. The plaintiff claimed that deputies from Community Oriented Policing Services ("COPS") falsely arrested him and then fabricated a surveillance during which they claimed to have seen him sell illicit narcotics.

Plaintiff had been convicted of the crime, but that conviction was reversed by the California Court of Appeal, which held that the trial judge wrongly refused to allow defense counsel to re-open his case to admit into evidence certain LASD computer records. The defense counsel was delayed in offering these records as evidence because, despite serving subpoenas on LASD, he did not receive all the records from LASD until after all evidence had been presented to the jury. Because LASD's delayed production resulted in defense counsel's inability to offer the records in defense of the charges and because civil liability for civil rights violations may have been avoided had defense counsel received the records earlier, OIR reviewed the procedures followed by LASD for production of those records.

The computer records in question were from LASD's Mobile Digital Communication System, which allows LASD personnel to communicate with each other through terminals located in each patrol car as well as at certain fixed locations. MDT's are messages sent through this system. An MDT may be used to notify a patrol unit of a call for service, for the patrol unit to record its activities during a shift, including those related to a specific call, to query the registration history of cars encountered by units, to query the criminal history of individuals detained, including whether there are any outstanding warrants, and to send messages between patrol cars and/or the station.

Different reports are used to retrieve the records of the different types of MDT's used by LASD. For instance, a Deputy Daily Worksheet lists each service call received by an officer, along with when each call for service was sent to an officer, when the officer acknowledged receipt of the call, when the officer went en route to the call, when the officer arrived at the location of the call, when the officer completed the call, and the action taken by the officer at the call. It also contains any observations or contacts made by the officer and entered through an MDT. An Incident History provides, for only one service call or incident rather than an entire shift, the information contained in a Deputy Daily Worksheet. A Unit



COUNTY OF LOS ANGELES  
**SHERIFF'S DEPARTMENT**  
"A Tradition of Service"

OFFICE CORRESPONDENCE

DATE: April 16, 2002  
FILE NO.

FROM: ROBERT SEDITA, CAPTAIN  
COMMUNICATIONS AND FLEET  
MANAGEMENT BUREAU

TO: ALL PERSONNEL

SUBJECT: **UNIT POLICY FOR HANDLING OF SUBPOENA DUCES TECUM REQUESTS ON  
CRIMINAL CASES**

The purpose of this memo is to establish a Unit Policy for the handling of Subpoena Duces Tecum (SDT) requests in criminal cases where no personal appearance is sought.

1. If the SDT is requesting "MDT" information, all available records will be provided. Those records consist of Deputy Daily Worksheet, Unit History, Incident History, Administrative Messages, CLETS/JDIC inquiries and returns.
2. If the SDT is requesting "radio communications", both the Dispatch and L-TAC recordings will be provided for the time frame requested in the SDT. If the SDT only lists an approximate time of incident then a time frame of ½ hour prior to the time given and ½ hour after the time given shall be provided. (Example: "Radio communications for incident occurring at 1245 hrs." Radio communications will be provided for 1215 to 1315 hrs on Dispatch and L-TAC channels for appropriate station.)
3. The completed SDT will be packaged in a sealed inner envelope with the title and number of the action, name of witness, and date of subpoena written on the face of it, and an outer envelope, then mailed to the clerk of the court listed on the SDT, via Certified Mail.
4. The responses to all SDTs shall be mailed no more than five days after the department received the SDT. If an SDT is received that seeks a response in a shorter period of time, the attorney shall be notified that the response to the SDT will not be available in the time frame requested. If the response to the SDT is not prepared and mailed within five days after the department received it, the response shall be delivered by hand to the clerk of the court on or before the date and time identified in the SDT.

LS:sp

is legally entitled, that public may become skeptical about the integrity of the organization and its willingness to comply with its disclosure responsibilities. Even in situations where the documents are not hurtful to the organization, if mechanisms are devised that make it arduous to obtain materials, the public will lose confidence in the organization's readiness to produce that information. Whether legitimate or not, the unfortunate and long-held views among some members of the general public that the organization is "hiding the ball" and "playing a shell game" are reinforced by an agency that is perceived to have nar-

(and OIR) assessment of future allegations of misconduct during surveillance operations.<sup>2</sup>

Addressing the specific issues raised by the litigation, the policy requires that a COPS deputy draft a surveillance operations plan. Two supervisors must then approve the plan and notify the Region Lieutenant of the proposed surveillance. Time permitting, COPS deputies will complete a surveillance work-up sheet containing background information about the individuals or area to be watched. A sergeant must then be present during the surveillance to supervise and a deputy must be designated to act as a scribe and complete a surveillance log detailing all observations made during the surveillance, which deputies observed them and what times the observations were made. The policy also encourages the video or audio recording of surveillances.

OIR also ensured that, between January and April of 2002, the majority of COPS deputies received training in surveillance tactics and the importance of the operations plan, work-up sheet, and surveillance log required by the new policy. OIR monitored each of the training classes to ensure they were comprehensive and effective.

To emphasize the importance of the new surveillance policies and procedures, OIR made a presentation at the training to explain the litigation, where the deputies involved in that litigation had run into problems, and how following the new procedures would help deputies avoid litigation and allegations of misconduct. OIR used trial transcripts to demonstrate the various inconsistencies in deputy testimony that had undermined the prosecution, influenced the appellate court in overturning the conviction, and ultimately weakened the County's position in the civil suit. OIR then explained how these inconsistencies could be avoided through the use of a surveillance log.

In accordance with OIR's role in ensuring protection of the civil rights of persons LASD is entrusted to serve, the surveillance training and procedures adopted by the COPS Bureau will ensure that surveillance operations conducted by COPS are subject to quality control and supervision. In addition, the training and procedures will redound to benefit of LASD by professionalizing the work of the

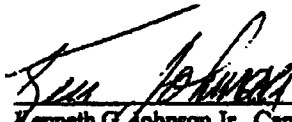
<sup>2</sup> This unit order applies not only to COPS Bureau deputies, but has already been adopted by at least some Specially Assigned Officers who perform similar community—oriented policing functions in cities that contract for police services from LASD. OIR is currently working to achieve compliance by all Specially Assigned Officers with the COPS surveillance policy.

This sheet (Exhibit B), should subsequently be given to each team member who participates in the surveillance in order to ensure that all present have all pertinent information.

Once the time, date and location etc. of the surveillance has been determined, the team sergeant will appoint a team member to act as a scribe. The team scribe will then be required to initiate an LASD Surveillance Log (Exhibit C) for use during the entire surveillance operation. The scribe shall document all observations broadcasted via radio transmission made by any team member during the operation. Additionally, the scribe shall ensure that he/she documents the time that significant events occur, such as the time the surveillance began and the time of any detentions or arrests. Team members are reminded to utilize their call signs prior to initiating all radio transmissions for ease and clarity of recording on the surveillance log by the scribe. Since the scribe position can be rotational, a team effort is needed for maximum efficiency. A COPS Sergeant shall be present during all surveillances conducted by COPS Teams.

COPS Teams are reminded that the use of video and or audio recording devices may be appropriate during some surveillances and are encouraged to utilize such items when applicable.

In all cases, exhibits A-C shall be retained in the original case file under the file number assigned to the operation. When arrests are made and prosecution is imminent, team members and detectives are encouraged to provide these documents to their local Deputy District Attorney at the time of filing.



Kenneth G. Johnson Jr., Captain  
Community Oriented Policing  
Services Bureau

COPS BUREAU

UNIT ORDER # 02-4

the claims that had never been responded to had long ago been the subject of litigation that was either dismissed, settled, or reached a verdict. Some are currently the subject of litigation. Some were apparently never pursued by the claimant. Many are so stale that their relevance now to current issues of discipline, training and policy is minimal.

OIR worked with County Counsel to determine an appropriate procedure for addressing these claims. OIR first identified those claims that were so outdated they were no longer relevant for either litigation or internal purposes. OIR then reviewed the remaining claims, filed from January 1, 2001 to the present, attempting to verify which ones had not received responses and prioritizing certain claims. The Undersheriff then requested responses to the claims, identifying certain ones as deserving priority. As a result of OIR's identification and the prodding of the Undersheriff, the units have addressed the outstanding claims.

#### *B. Quality of Unit Claim Responses*

OIR next addressed the quality of the LASD claim responses. Many of the unit claim responses merely repeated the substance of any reports that were completed at the time of the underlying incident, with no attempt to contact witnesses or determine any events that had happened since the incident. If there was no existing documentary record of the incident complained of, many times no further inquiry was made of personnel to learn whether the incident had occurred and not been documented. Rarely was any attempt made to contact and interview the complainant or identified witnesses. Few of the responses demonstrated any serious consideration of: (1) whether any LASD policy had been violated; (2) whether initiation of an administrative investigation was appropriate; and (3) whether the complained-of conduct reflected a deficiency in training or LASD policies or practices.

Based on discussions with County Counsel and LASD, OIR recommended significant changes to the current process. Those changes include more thorough inquiry into the allegations in claims, specific guidelines for that inquiry, a mechanism for enforcing the timely response to claims, and a mechanism for ensuring the quality of the inquiry into the allegations in the claim. These recommendations focus attention on determining whether administrative investigations are warranted, gathering facts that help County Counsel better assess the merits of the allegations, and identifying any issues of training or procedures that LASD should address.

or allegations provided by the claim. The Claim Review need not repeat any steps taken as part of any prior investigation or review, unless additional or different information or allegations require additional investigation. To the extent additional or different information or allegations are found in the claim, that new information shall be reviewed like any other claim.

#### **Administrative/Criminal Investigations**

If, at any time while reviewing the claim, the unit commander determines that discipline or criminal prosecution may be an issue because of the nature and seriousness of the allegation(s) and/or the concerned employee's performance history, the unit commander shall follow Department policy, as set forth in Section 3-04/020.05, for initiation of an appropriate administrative or criminal investigation. When an administrative or criminal investigation is initiated, the unit commander shall coordinate with the Civil Litigation Unit and/or County Counsel to inform them that an administrative or criminal investigation has been initiated and to assist in responding to the claim as necessary. As long as discipline or criminal prosecution is not an issue, the unit commander shall perform a Claim Review. The unit commander should keep in mind that the selection of a given course of action does not preclude initiation of another course of action if the subsequent uncovering of facts justifies or mandates it.

#### **Unit Commander's Claim Review Report**

After conducting his Claim Review, the unit commander shall direct a memorandum to his division chief and complete any worksheets forwarded by Civil Litigation along with the claim. The unit commander's memorandum shall include:

- All information obtained from the review of the claim, including a list of witnesses, any conflicting versions of the facts, and each source for information, as well as a description of the claim review performed.
- All training, policies or procedures relating to the conduct alleged to be wrongful, and any perceived issues or nonissues regarding the same.
- Whether any administrative or criminal investigation is warranted.
- Identification of personnel involved in the events underlying the claim as either an involved employee or as a supporting employee. (An "involved" employee is someone who took part in the event, while personnel who witness it or who were in the vicinity or had post incident involvement are "supporting" employees. If the event involves an incident where no employees were directly involved, i.e., slip and fall by a county inmate at a jail facility, with no Department witnesses, the unit commander shall indicate "no Department employees involved.")
- Whether the personnel involved were contract city items or county items, whether the location of occurrence was within a contract city, unincorporated area, Department facility or independent incorporated city, and whether the personnel were performing contract city business at the time of the occurrence.
- Any other insights or assessments of the claim or issues raised by it.

The completed worksheets provided by the Civil Litigation Unit, as well as relevant supporting documents shall be attached to the unit commander's memorandum. All other documentary or physical evidence relating to the civil claim shall be preserved by the unit in a manner that allows for its retrieval.

Throughout this process of reviewing LASD's treatment of claims, OIR has been impressed with the cooperation it has received from LASD. OIR has appreciated the candor with which LASD personnel have been willing to discuss the claims review process and refine their agency's claim investigation procedures. OIR has also appreciated the willingness of LASD personnel to adopt new procedures in this area.

#### **IV. Systemic Changes to Use of Restraints on Inmates**

In October 2001 the Board of Supervisors agreed to settle a wrongful death lawsuit resulting from a death in LASD custody, and Special Counsel Merrick Bobb issued a report raising several questions about that death and LASD's response. The Board then requested that OIR examine the LASD's inquiry into the death and offer recommendations regarding issues raised in Special Counsel Bobb's report.

The death occurred during the application of a four-point restraint on the inmate. A four-point restraint tethers both arms and both legs of an individual to a bed and is used where an individual presents a danger to himself or others. The inmate had been examined by medical personnel who concluded that he was suffering from a "drug induced psychosis." Although the inmate was not exhibiting any physically aggressive behavior, a restraint was ordered. Initially, a three-point restraint, which would have left one extremity free, was ordered, but this was changed to a four-point one by doctors who had not examined the inmate. Several hours after the initial authorization of restraints, deputies applied them. During that application the inmate died.

##### **A. *OIR's Findings***

OIR's investigation into LASD's inquiry into the inmate's death found deficiencies in policies and procedures that led to problems with application of the restraints and that were compounded by an inadequate review of LASD conduct after the death.

LASD's written policies and procedures for application of restraints were vague, incomplete, and unenforced. LASD policies and procedures did not require any tactical planning for the application of restraints nor any attempt to gain inmate

important, also had a focus that left several administrative issues unexplored. The decision, made within days of the death, to preclude an internal affairs review was significant in several respects. First, because of it internal affairs investigators never reviewed evidence that may have led to questions about whether deputy conduct violated policy. Internal affairs investigators never heard the audio-taped interviews of the involved deputies and never saw the autopsy report, which attributed the death to asphyxiation. Nor did they see the District Attorney's letter. Second, because the incident was exempted from normal force review procedures, the Executive Force Review Committee never examined the force used for policy violations and any potential disciplinary action.

This lack of review is not without consequence. The facts suggest that even with policies then in place, there may have been potential or actual policy violations related to the application of the restraints. First, there are questions whether, given that the inmate was not presenting a life-threatening situation, the level of force was within policy. LASD policy requires that deputies exercise care to ensure no injury to an inmate during the application of restraints authorized by medical staff. LASD policies limit personnel to use only objectively reasonable force when necessary to perform their duties and prohibit the use of unreasonable or excessive force. Second, a policy violation may also have occurred when the involved deputies began to apply the restraints without supervision and applied them outside the presence of medical personnel. An LASD policy then in place mandated that deputies apply leather restraints only at the discretion and supervision of the medical staff. While the medical staff authorized the application of restraints, no member of the medical staff supervised or monitored the involved deputies' application of the restraints.

#### *B. Revised Policy for the Application of Restraints*

Over the course of several months, OIR and LASD discussed revisions to LASD policy. From the outset of these discussions, OIR and LASD agreed that the revised policy, which became effective in June 2002, needed to recognize that the application of restraint devices may constitute a use of force. This change is intended to increase and encourage effective communication among LASD personnel who authorize and apply restraint devices on inmates, and to make LASD personnel more accountable and responsible in their treatment of inmates who require restraint.

#### **5-03/130.00 MEDICALLY ORDERED RESTRAINT DEVICES**

Unit commanders shall ensure that procedures related to the use of medically ordered restraint devices conform with Division policy. Restraint devices shall only be used on inmates who display behavior which results in the destruction of property, or pose a serious threat to themselves or others. Restraint devices are used to immobilize an inmate's extremities and prevent them from being ambulatory. Restraint devices shall not be used under any circumstances to punish or harm an inmate. This section does not apply to the use of handcuffs, shackles, safety chairs, or other restraint devices when used to restrain inmates for security reasons pursuant to Title 15, Minimum Standards For Local Detention Facilities, section 1058 "Use of Restraint Devices." See Custody Division Manual 5-03/130.05, "Safety Chair" for Policy and Procedure pertaining to the safety chair. Examples of restraint devices include, but are not limited to:

- Leather restraints, including 3 and 4 point systems,
- Soft ties,
- Padded belts.

Only restraints specifically manufactured for the purpose of safely restraining persons shall be used. Restraint devices shall not be modified from their original specifications unless done so by the manufacturer. All restraint devices shall have the prior approval of a Custody Division Chief. Restraint devices shall never be used as punishment, harassment, or for the sole purpose of knowingly causing harm to an inmate.

Only trained personnel shall be authorized to perform or assist in the placement or removal of restraint devices. The concerned facility's training unit shall maintain a record of custody personnel trained in the use of each restraint device. The entire restraint procedure shall be video taped, and a sergeant trained in the use of restraints shall be present during the entire restraint procedure.

Any incident requiring the use of restraints shall be recorded in the Watch Commander's Log. The watch commander shall provide a memorandum to the unit commander which shall include the following information:

- Date and time of occurrence,
- Inmate's name and booking number,
- Location,
- Personnel involved,
- Reason for the use of the restraint device,
- Condition of the inmate before and after release from the restraint device,
- Name of the physician or psychiatrist ordering restraints and the reason,
- Name of the nurse who medically assessed the inmate after the restraints were applied and the location where the assessment occurred,
- The area where the inmate was housed prior to being placed into restraints,
- The classification of the inmate (mentally ill, homosexual, general population,



risk, the restraints shall be removed. Immediate removal of restraints without the direction of medical personnel may also occur in emergencies including, but not limited to:

- Emergency evacuations (i.e., fire, earthquake, etc.),
- Cessation of breathing,
- Heart attack.

In every exigent circumstance where restraints are removed without medical concurrence, the watch commander shall be notified immediately.

#### APPLICATION OF MEDICALLY ORDERED RESTRAINTS

Custodial personnel shall assist in the placement and removal of restraints at the request of the medical staff. Application of restraints is a tactical event, which requires pre-planning on the part of the sergeant and requires strong command and control. The sergeant shall supervise and manage the custodial personnel in the application of restraints. Prior to applying medically ordered restraints, the sergeant shall review the order for restraints. If more than 2 hours has elapsed since the order was given the sergeant shall request a reevaluation of the need for restraints, based upon the inmates current condition. The sergeant shall then advise the inmate of the reason for the intended application of restraints and attempt to gain the inmate's cooperation with the application of the restraints. The sergeant shall ensure that sufficient personnel, trained in the application of restraints, are present, and that all assisting personnel are thoroughly briefed regarding their individual duties and responsibilities in applying the restraints. Under most circumstances two custodial personnel per limb shall be assigned to restrain the inmate. One to constrain the limb, the other to apply the restraint. Deviation from this procedure may only occur under exigent circumstances.

When applying restraints, custodial personnel must be cognizant of the inmate's physical condition. Since the application of restraints is a medical procedure, personnel must consider that preexisting medical or mental health conditions may exist. The application of pressure upon the head, neck, throat, chest, diaphragm, or abdomen of the inmate, or any control technique that impairs the inmates ability to breathe, shall be avoided in all but the most compelling of circumstances. The sergeant shall ensure that the inmate has unrestricted breathing during and after the application of restraints. The sergeant shall diligently monitor personnel to assure that the control techniques being used comply with this section. Any person involved with the application of restraints, especially the sergeant and the medical services clinician, have the duty to terminate the procedure immediately if they detect any action that puts the personnel or the inmate in unreasonable danger of a life threatening situation, injury, or medical distress.

All restraining procedures shall be videotaped, uninterrupted, including:

- Transport of the inmate to the Medical Services Building,
- All conversations between the sergeant and the inmate,

## Working to Achieve Systemic Change

| OIR Identification of Systemic Problem  | OIR Recommendation  | LASD Response  | Implementation of OIR Recommendation |
|---|---|--|--------------------------------------|
| Lack of evidence of any LASD response to more than 800 civil claims dating from 1993                                      | Develop system to respond to critical overdue claims  | Office of the Undersheriff and County Counsel work with OIR to obtain responses to overdue claims                                  | YES                                  |
| Claim responses lacking in quality and comprehensiveness  | Improve claims investigation guidelines to ensure more comprehensive responses  | Office of the Undersheriff and County Counsel to work with OIR to devise improved guidelines                                       | YES                                  |
| COPS Deputies conducting drug surveillance w/o written surveillance policy  | Develop written surveillance policy   | COPS Command Staff and OIR work jointly to develop feasible written surveillance policy  | YES                                  |
| COPS Deputies conducting drug surveillance w/o surveillance training  | Provide surveillance training to COPS Deputies  | COPS Command Staff and surveillance expert from Major Crimes Bureau work with OIR to develop training curriculum                   | YES                                  |
| LASD response to MDT subpoena request narrowly interpreted to pertain only to certain types of MDTs                       | Produce all types of MDT communications in response to criminal subpoena requests   | Chief of LASD, Data Systems Bureau and his staff work with OIR to modify LASD policy to broaden response to criminal MDT subpoenas | YES                                  |
| LASD response to MDT subpoena requests untimely   | Create more efficient protocol for timely production in response to MDT subpoenas   | Chief of Data Systems Bureau and staff work with OIR to modify LASD policy so that timely compliance is achieved                   | YES                                  |
| Single-party consensual tape recording of conversations undertaken in internal affairs investigation contrary to case law | Devise internal affairs policy and training bulletin indicating limitations on such procedures in internal affairs investigations | Internal Affairs Bureau Captain and Lieutenants work with OIR to produce policy and training bulletins indicating such limitations | YES                                  |

# OIR Challenges

**W**HILE LASD has provided unlimited access to its materials, a similar commitment for unfettered access to civil litigation documents and other information has not been forthcoming from County Counsel, the possessor of much of the civil litigation information. Accordingly, while OIR has access to the claims and lawsuit complaints as they are received by LASD, County Counsel has blocked OIR from acquiring any further documents or information generated by the civil litigation process. This restriction impedes OIR's efforts to ensure that LASD use information learned during lawsuits to address alleged misconduct of individual employees and to conduct timely examination of systems, policies, training and procedures.

Civil litigation is a potentially useful source of information about misconduct, as well as system or training failures. The claim and lawsuit complaint usually contain only bare bones and conclusory statements about the alleged misconduct. It is during the civil litigation process, when witnesses are identified, depositions are taken, motions are filed, hearings are convened, and trials conducted, that the information supporting the allegations is made known to the lawyers defending the County. This information is learned by County Counsel; however, there is no effective conduit through which these facts are transmitted to the LASD units responsible for addressing misconduct and training. From its inception, OIR has sought to establish a conduit whereby information learned during the lawsuit could be used to begin an internal inquiry into any alleged misconduct as well as address policy, systems, or training issues implicated by the litigation. County Counsel has resisted this effort.

# PART FIVE Outreach to Civil Rights Groups *and the Community at Large*

**I**N CARRYING out its oversight function, OIR essentially acts as the public's independent representative, helping to ensure that LASD employees exercise their authority responsibly and with proper respect for the rights of individuals. Accordingly, OIR has welcomed the input of local civil rights leaders and has worked to keep them, and the public in general, apprized of its developing role and its accomplishments.

OIR representatives have strived to increase the public's awareness of the Office and to gain insight into the perspectives and concerns of a wide array of individuals and civil rights groups. OIR has also used its outreach efforts both to establish rapport that will maximize our productivity and to help pinpoint systemic problems that are amenable to improvement. Finally, OIR has interacted with other oversight agencies seeking insight into OIR's new model, including a contingent from the country of Turkey.

## **I. The Civil Rights Community**

From its earliest stages, OIR has reached out to the entities significantly involved in civil rights matters. The hard-earned familiarity that these groups have with problematic law enforcement behavior, and its effects on community relations, has been an important source of insight for OIR.

OIR has also talked with individual civil rights practitioners in the Los Angeles area. OIR solicited input from these organizations and individuals regarding law enforcement issues, particularly those dealing with LASD. OIR obtained valuable information about LASD policies and procedures from these important sources of information. Civil rights attorneys who had been successfully litigating against LASD for years shed light on certain practices in the misconduct arena and elsewhere. The civil rights community also provided important background information regarding certain public perceptions of LASD and its operations.

## **IV. OIR's Sharing of its Oversight Model**

Throughout its own short history, OIR has received inquiries from other law enforcement agencies seeking to learn of our mission, operating plan, challenges, and initial achievements. For example, the newly-appointed police monitor for the Austin Police Department came to Los Angeles to learn about the OIR oversight model. In addition, governmental representatives from Turkey have visited Los Angeles to learn of police oversight in the United States. It is the goal of these meetings that some of the precepts and principles that guide OIR can be incorporated into an oversight model for the Turkish police.

In addition, OIR has been requested to present an overview of its oversight model at the upcoming annual conference of the National Association for Civilian Oversight in Law Enforcement ("NACOLE"). NACOLE is the leading national organization for civilian oversight and draws oversight groups throughout the country to its annual conference. OIR's model of oversight is unique in comparison to those implemented for other law enforcement agencies. The presentation by OIR will allow discussion of OIR's organizational structure and early accomplishments, and will give other agencies an opportunity to evaluate OIR's approach for applicability to their own jurisdictions.

In August 2002, OIR gave a presentation describing its model to the Hispanic American Police Command Officers' Association. The presentation gave an overview of the different oversight models and how they compare and contrast to OIR. Commanding officers, chiefs, deputy chiefs and architects of oversight from around the country attended the presentation and expressed interest in how OIR works, what challenges it faces and what it expects to accomplish in the future.

The interest in OIR from leaders of the national civilian oversight association and leading police officials is clear indication that OIR has already been identified as a progressive model of police oversight. That indication is further confirmed by recently published literature concerning the relationship between the police and the community. In *When Cultures Clash*, a book dealing with the "divisive nature of police-community relations and suggestions for improvement," author Daniel P. Carlson describes OIR as "breaking new ground in the management of civilian complaints." Carlson finds the "forward-looking approach" of creating a team of attorneys and then empowering OIR to review and make recommendations regarding internal investigations to be the most far-reaching of all civilian oversight models in the country.

# APPENDIX A Attorney Profiles

## **Michael J. Gennaco**

Michael Gennaco came to OIR from the Office of the United States Attorney, where he served as Chief of the Civil Rights Section. In that position, Mr. Gennaco was responsible for overseeing all police misconduct, hate crimes, and involuntary servitude investigations and prosecutions for the Central District of California. He also served as the federal civil rights liaison for community and public interest groups and federal and local law enforcement agencies.

Prosecutions and investigations that Mr. Gennaco has been involved in included the prosecution of Buford Furrow, Jr., for his racially motivated killing of a postal carrier and anti-Semitic shootings of four children and one adult at the North Valley Jewish Community Center, the Thai El Monte garment slaveshop case, the UC Irvine and Cal State Los Angeles Internet hate e-mail prosecutions, and the prosecution of an INS detention enforcement officer for using excessive force. The Furrow prosecution was the first federal prosecution involving dual allegations of hate motivation and domestic terrorism. The UCI prosecution was the first federal prosecution of a hate crime perpetrated over the Internet. As Chief of the Civil Rights Section, Mr. Gennaco also oversaw prosecutions of officers from the Los Angeles County Sheriff's Department, the Los Angeles Police Department, and the Adelanto Police Department.

Prior to working at the U.S. Attorney's Office, Mr. Gennaco served for ten years as a trial attorney with the Civil Rights Division in Washington, D.C. While there, Mr. Gennaco successfully prosecuted an LAPD officer for using excessive force and making a false arrest and was involved in prosecuting numerous other hate crimes and police misconduct cases.

## **Robert Miller**

Rob Miller is the Deputy Chief Attorney at OIR primarily responsible for matters related to internal affairs investigations. He came to the OIR from a fifteen-year career in the Los Angeles County District Attorney's Office. His assignments there included central felony trials, juvenile crimes, environmental crimes, OSHA death cases and administration. He prosecuted 70 jury trials for crimes ranging from murder and kidnaping to toxic dumping and corporate fraud. He has taught evidence, environmental crimes prosecution, and case investigation techniques at seminars and symposia sponsored by the California District Attorneys Association, the Los Angeles County Bar, the California Hazardous Materials Investigators Association, OSHA, the AFL-CIO and the Western States Project.

He has testified before numerous legislative committees in Sacramento on behalf of proposed law enforcement legislation. Rob attended law school at UCLA and received his undergraduate degree from Stanford University. He was a research fellow of the University of California Institute on Global Conflict and Cooperation and received a MacArthur Foundation grant in Rome for research on terrorism.

## **Ray Jurado**

Ray Jurado began his career with the Los Angeles County District Attorney's Office. As a deputy district attorney, he was assigned to the Central Trial Unit where he prosecuted violent felonies, tried many cases resulting in guilty verdicts and was promoted to Assistant Deputy-In-Charge of the West Covina office.

After more than five years as a Deputy District Attorney, Mr. Jurado joined the Glendale law firm of O'Flaherty & Belgum, where his practice consisted of complex medical malpractice litigation.

Prior to joining OIR, Mr. Jurado was an Assistant United States Attorney in the United States Attorney's Office for the Central District of California in Los Angeles for over six years. Assigned to the Major Crimes Section, he targeted gang-related violent crime. As a trial prosecutor, he earned numerous guilty jury verdicts, including a four-defendant Hobbs Act conspiracy conviction involving Bloods and Crips gang members. He also prosecuted several first of their kind cases in the Central District of California, including a twenty-six-defendant RICO prosecution of the 18th Street and Mexican Mafia gangs, the

## **Stephen J. Connolly**

Steve Connolly joined OIR after beginning his legal career in private practice. He specialized in white collar criminal defense as an associate at the Los Angeles offices of Kirkland & Ellis, and represented clients at various stages of federal criminal investigations. While still at Kirkland & Ellis, Mr. Connolly's pro bono work included serving as counsel to the Rampart Independent Review Panel. That group produced a report in November of 2000 that assessed the Los Angeles Police Department's Rampart scandal and proposed a number of reforms.

Mr. Connolly also worked as a volunteer prosecutor for Redondo Beach, California, as part of that city's "Trial Advocacy Prosecution Program." Mr. Connolly graduated from Holy Cross College in Worcester, Massachusetts, and has a Master's Degree in Literature from the University of California, Irvine. After several years as a writing teacher at the high school and community college levels, he attended Loyola Law School in Los Angeles, where he graduated cum laude in 2000.